



ATTORNEY GENERAL OF MISSOURI

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February 22, 2010

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Dear Ms. Darcy:

On behalf of the state of Missouri, I urge you to direct the U.S. Army Corps of Engineers (Corps) to change the manner in which it is implementing the Missouri River Authorized Purposes Study (MRAPS). In the 2009 Omnibus Appropriations Act (Act), the United States Congress directed the Secretary of the Army to conduct a study of the Missouri River Projects with the "express purpose to review the original project purposes based on the 1944 Flood Control Act, as amended, and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing federal water resources infrastructure may be warranted."

According to information on the Corps' website and the information presented at public forums, the Corps plans to conduct a much broader study than was authorized by Congress. The Corps' website states that the Corps will "identify options that provide more multi-purpose benefits in terms of economic, ecosystem, socio-economic and societal outputs." In addition, the website states that "the study will analyze trade-offs and efficiencies, as well as evaluate river management options in light of current basin values and priorities." The Corps also has stated and presented information to the public that they intend to provide Congress with a comprehensive feasibility-type report and a full-blown Environmental Impact Statement (EIS) under the National Environmental Policy (NEPA).

The authorizing language for this study is unambiguous. It authorizes the Secretary **"to determine if changes to the authorized project purposes may be warranted."** Congress did not authorize the Corps to evaluate alternatives or recommend options, or to provide Congress with a comprehensive report and EIS. To comply with the clear direction of Congress, the Corps' study can do no more than determine if changes to the authorized purposes may be warranted. The Corps' current approach to this study exceeds its congressional mandate and therefore constitutes a misuse of federal funds.

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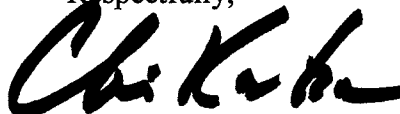
The language authorizing the MRAPS study should be compared with the language for the Department of Transportation study authorized in Section 195 in the 2010 Omnibus Appropriations Act ("Section 195 Study"). The Section 195 Study legislation authorizes the Department of Transportation "to develop a comprehensive understanding of the full value of river flow support to users in the Mississippi and Missouri rivers . . . and in addition to understanding current value, . . . to develop recommendations on how to minimize impediments to growth and maximize water value of benefits related to energy production and efficiency, congestion relief, trade and transport efficiency, and air quality." [emphasis added] This congressional mandate clearly authorizes recommendations for action, whereas the MRAPS study requests a determination on whether actions are even warranted.

As you are aware, the Corps has just completed a 17-year, \$35 million study of Missouri River operations that resulted in revisions to the Missouri River Master Water Control Manual in 2004, and again in 2006. The Corps' study included all of the authorized purposes. While the courts have reaffirmed that flood control and navigation are the two dominant purposes, the Master Manual revision study did not assume a priority for any use. In making its decision on the revised Master Manual, the Corps indicated that the new plan meets the contemporary needs of the basin. Given this history, it is hard to fathom that the Congress would be contemplating yet another study that plows the same ground, which indeed may be why it asked first for a determination if further action is warranted, instead of taking the additional step of asking for recommendations or alternatives.

I respectfully request that you direct the Corps to narrow the focus of MRAPS and revise the study process to comply with the plain language of the authorizing legislation. The state of Missouri contends that the study should do no more than determine if changes to the original authorized project purposes or federal water resources infrastructure may be warranted. If changes are not warranted, then federal funds should not be wasted to develop recommendations and alternatives that Congress did not request and that may never be implemented.

I eagerly await your response to this most important issue.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Koster", written in a cursive, flowing style.

CHRIS KOSTER
Attorney General

c: Governor Jay Nixon
BG John R. McMahon